S.B.CIVIL SECOND APPEAL NO.140/2005

Rameshwar.
vs.
Jai Singh.

DATE OF JUDGMENT ::: 8.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. V Bishnoi, for the appellant.

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Heard learned counsel for the appellant.

The plaintiff filed suit for possession of the plot in dispute on the ground that the suit property was purchased by the plaintiff from Anil Kumar for a consideration of Rs.6,000/- on 10.5.1993 by registered sale deed. He also got the possession of the said property. It is said that the said property was obtained by Anil Kumar by the Gram Panchayat Jasana on 12.5.1988. The defendant encroached upon the said land, therefore, the suit for possession was filed by the plaintiff. The trial court dismissed the suit of the plaintiff basically relying upon the plaintiff's witnesses and DW2 Anil Kumar, alleged seller of the plot to the plaintiff.

According to learned counsel for the appellant, when the seller himself appeared in the witness box and clearly stated that though he sold one plot to the plaintiff bu the

plot in dispute is not the same plot which he sold. In view of the above, according to learned counsel for the appellant, the first appellate court committed error in interfering with the finding of fact recorded by the trial court. It is also submitted that the neighbourhood shown by the plaintiff appears to be wrong and does not tally with the plot in dispute.

I considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below given in their judgments dated 1.11.2004 and 1.2.2001.

It appears from the reasons given by the first appellate court that the first appellate court carefully and critically considered the statement of the important witness DW2 Anil Kumar who appeared as a defendant's witness. He stated that he though sold one plot to the plaintiff but the plot in question is not the same plot. The first appellate court carefully examined the cross examination of this witness and examined the various neighbourhood of the plot in the light of statement of DW2 Anil Kumar and thereafter reached to the conclusion that from the entire evidence of DW2 Anil Kumar himself and with the support of Commissioner's report, sale deed and patta, it is clearly proved that the land in question was sold to the plaintiff.

This finding of fact is based on appreciation of evidence and I, therefore, do not find that this finding

can be interfered under the provisions of Section 100 CPC.

In view of the above, I do not find any substantial question of law involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya